

Message Text

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ORIGIN TRSE-00

INFO OCT-01 EB-08 ISO-00 L-03 COME-00 AID-05 CIAE-00
FRB-03 INR-10 NSAE-00 USIA-06 XMB-02 OPIC-03
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FM SECSTATE WASHDC
TO AMEMBASSY COPENHAGEN
AMEMBASSY LONDON
AMEMBASSY BRUSSELS
INFO AMEMBASSY PARIS

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USEEC, USOECD

E.O. 11652: N/A

TAGS: EFIN, DA

SUBJECT: DANISH TAXATION OF MNES

REF: COPENHAGEN 853

1. WE BELIEVE THAT DANISH DECISION RE TAXATION OF MNES,
AS REPORTED IN REFTEL AND FEBRUARY 7 ISS'E OF LONDON
FINANCIAL TIMES, MAY RAISE ISSUES FOR DIS-USS ON OF
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NATIONAL TREATMENT PRINCIPLE BY OECD COMMITTEE ON INTERNA-
TIONAL INVESTMENT AND MULTINATIONAL ENTERPR-S-S (CIME).
EMBASSY MAY RECALL THAT DENMARK AND OTHER OECD MEMBER
COUNTRIES ARE PARTIES TO 1976 OECD INVESTMENT DECLARATION
UNDER WHICH THEY AGREED THAT MEMBER COUNTRIES SHOULD
"ACCORD TO ENTERPRISES OPERATING IN THEIR TERRITORIES AND
OWNED OR CONTROLLED DIRECTLY OR INDIRECTLY BY NATIONALS

OF ANOTHER MEMBER COUNTRY TREATMENT UNDER THEIR LAWS, REGULATIONS AND ADMINISTRATIVE PRACTICES, CONSISTENT WITH INTERNATIONAL LAW AND NO LESS FAVORABLE THAN THAT ACCORDED IN LIKE SITUATIONS TO DOMESTIC ENTERPRISES (HEREINAFTER REFERRED TO AS "NATIONAL TREATMENT")." THEY FURTHER AGREED TO NOTIFY MEASURES CONSTITUTING NEW EXCEPTIONS TO SUCH NATIONAL TREATMENT TO THE OECD WITHIN 30 DAYS. SINCE DANISH TAX ASSESSMENT BOARD ACTION APPARENTLY EXPLICITLY AIMED AT FOREIGN-CONTROLLED OIL FIRMS, WE SEE

IT, NOTWITHSTANDING OECD GUIDELINES ON TRANSFER PRICING, AS POSSIBLY CONTRADICTORY TO NATIONAL TREATMENT PRINCIPLE AND REQUIRING NOTIFICATION. TRANSFER PRICING TAX LAW, EVEN THOUGH AIMED AT MULTINATIONALS MAY NOT POSE PER SE A NATIONAL TREATMENT ISSUE. SUCH AN ISSUE, HOWEVER, WOULD BE RAISED UNDER OECD GUIDELINES AND NATIONAL TREATMENT DECISION, AND UNDER FCN TREATY OF 1951 (E.G. ARTICLE XI), IF LAW SELECTIVELY ENFORCED FOR POLITICAL OR OTHER REASONS SOLELY AGAINST FOREIGN MULTINATIONALS, AND NOT DANISH MULTINATIONALS AS WELL.

2. HOWEVER, BEFORE DECIDING FUTURE STEPS (WHICH MIGHT INCLUDE RAISING THE CASE IN THE CIME) WE NEED MORE BACKGROUND INFORMATION ON BOARD'S DECISION. IN ORDER THAT WE MAY HAVE SUFFICIENT TIME TO EVALUATE SITUATION AND MAKE DECISION PRIOR TO NEXT CIME MEETING (APRIL 11-13), EMBASSY LIMITED OFFICIAL USE

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IS REQUESTED TO PROVIDE AVAILABLE BACKGROUND INFORMATION ON DANISH ACTION BY MARCH 17. WE WOULD APPRECIATE EMBASSY COMMENTS ON BUT NOT LIMITED TO, THE FOLLOWING ISSUES:

(1) SPECIFIC DETAILS OF TAX ASSESSMENT BOARD DECISION AND PROVISIONS OF CORPORATION TAXATION ACT UNDER WHICH BOARD ACTED, INCLUDING EFFECT OF DECISION ON WHETHER COMPANIES HAVE RIGHT TO ADMINISTRATIVELY OR JUDICIALLY CHALLENGE TAX BOARD DECISION RE THEIR USE OF TRANSFER PRICES; (2) WHETHER "ARMS LENGTH" TAX PROVISIONS WILL BE ENFORCED AGAINST OTHER MULTINATIONALS INCLUDING DANISH-OWNED MULTINATIONALS; (3) SOCIAL DEMOCRATIC PARTY'S GENERAL ATTITUDES RE FOREIGN MNEs; (4) SIZE, NATIONALITY, MARKET SHARES, ETC. OF INDEPENDENT OIL COMPANIES, AND SIMILAR INFORMATION ON FOUR FIRMS AFFECTED BY DECISION, INCLUDING WHETHER THEY ARE BRANCHES OR SUBSIDIARIES OF FOREIGN PARENTS; (5) ANY FURTHER INFORMATION EMBASSY HAS ON HOW SERIOUSLY FOUR FOREIGN FIRMS TAKE DECISION, WHAT THEIR ESTIMATES OF COST OF ACTION TO THEM ARE, AND WHAT STRATEGY THEY HAVE ADOPTED TO DEAL WITH IT, INCLUDING POSSIBLE APPEALS TO DANISH COURTS OR TO HOME GOVERNMENTS UNDER BILATERAL TAX TREATY OR ON OTHER GROUNDS; (6) ATTITUDES OF FOREIGN AND DANISH BUSINESS COMMUNITIES; (7) ANY PAST

PROBLEMS BETWEEN FOREIGN FIRMS AND DANISH TAX AUTHORITIES;
(8) LATEST DEVELOPMENTS; AND (9) EMBASSY'S ESTIMATE OF
HOW CASE WILL EVOLVE, INCLUDING TIME IT WOULD TAKE FOR
RESOLUTION IN COURTS. WE WOULD ALSO APPRECIATE EMBASSY
POUCHING ENGLISH TRANSLATIONS OF PUBLIC STATEMENTS OF
DECISION REPORTEDLY ISSUED BY OIL COMPANIES AND FIVE
DANISH OP,OSITION PARTIES, RESPECTIVELY.

3. FYI. WE HAVE NOT YET BEEN CONTACTED BY THE THREE
U.S. FIRMS INVOLVED. WE ARE PLANNING TO TALK TO EXXON
AND TEXACO. DECISION MAY BE DEFERRED PENDING RECEIPT OF

EMBASSY REPORT. WE WOULD PREFER, AT PRESENT TIME, THAT
DANISH GOVERNMENT NOT BE APPRISED OF OUR INTEREST IN
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CASE. END FYI.

4. FOR EMBASSY LONDON: REQUEST THAT YOU MAKE INQUIRIES
WITH HMG AS TO WHETHER THEY HAVE BEEN APPROACHED BY BP ON
THIS CASE AND WHAT ACTION, IF ANY, HMG MIGHT TAKE BI-
LATERALLY OR MULTILATERALLY ON IT.

5. FOR USEEC: WOULD APPRECIATE MISSION VIEW ON WHETHER
ANY SPECIAL EC-WIDE PROVISION RE TAX TREATMENT OF EC
MEMBER FIRMS WOULD APPLY IN THIS CASE. VANCE

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